

EXHIBIT B

Declaration of Philip P. Mann

Case No. 21-CV-0817-TSZ

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX DIGITAL
GROUP LLC; DAVID SCHAEFER; JORDAN
GREEN; JEFFREY CONWAY; JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

BUNGIE, INC.'S OBJECTIONS AND
RESPONSES TO DEFENDANT
PHOENIX DIGITAL GROUP LLC'S
FIRST SET OF INTERROGATORIES

PRELIMINARY STATEMENT

The objections and responses set forth below are based upon such information that is presently available to Bungie. Bungie provides these objections and responses without prejudice to its right to assert additional objections and amend or supplement any or all of the information contained in its responses as additional facts are ascertained, analyses are made, and research is completed. These objections and responses are made without waiving or intending to waive, but on the contrary preserving:

a. all assertions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses or subject matter thereof, in any proceeding in this action, including trial, or in any other action;

b. the right to object on any ground to the use of said responses, or the subject matter thereof, in any proceeding in this action, including trial, or in any other action; and

c. the right to object on any ground at any time to additional requests for production, interrogatories, or other discovery procedures involving or relating to the subject matter of these Interrogatories.

A partial answer to any Interrogatory that has been objected to, in whole or in part, is not intended to be a waiver of the objection.

In responding to the Interrogatories, Bungie does not concede the competency, relevancy, materiality, or admissibility of the subject matter of the Interrogatories. Nothing contained in its objections and responses is to be construed as an admission by Bungie concerning:

- a. the existence of any information or document;
- b. the relevance or admissibility of any information or document; or
- c. the truth or accuracy of any information, document, statement, construction, or characterization.

Any information conveyed in conjunction with Bungie's objections and responses is not to be construed as an admission as to the competency, relevancy, materiality, or admissibility as evidence for any purpose in this action or in any other proceeding. Bungie will respond to each Interrogatory, to the extent that no objection is made, based upon its interpretation and understanding of the Interrogatory.

GENERAL OBJECTIONS

The following objections apply to each and every Interrogatory propounded by Defendant Phoenix Digital Group LLC ("Phoenix Digital") and are incorporated into each of the following specific responses by reference as if set forth in full in response to each individual Interrogatory. Any repetition is for emphasis only and not to the exclusion of any other General Objection.

1 1. Bungie objects to the Interrogatories to the extent they call for information that is
2 protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or
3 any other privilege, protection, or immunity provided by law (“Privileged Information”). Any
4 response should be construed to exclude Privileged Information. Inadvertent disclosure of
5 Privileged Information shall not constitute a waiver of, nor signify intent to waive, the applicable
6 privilege, either as to the information or documents inadvertently disclosed or as to any other
7 information or documents. Nothing contained in Bungie’s responses or the documents produced
8 is intended to be or should be considered a waiver by Bungie of any applicable protection.

9 2. Bungie objects to the Interrogatories to the extent they are vague and ambiguous,
10 use terms that are not defined or understood, seek information that is not relevant to the subject
11 matter of this action or proportional to the needs of the case, and are unduly burdensome or
12 oppressive.

13 3. Bungie objects to the Interrogatories to the extent they call for legal conclusions.

14 4. Bungie objects to the Interrogatories to the extent they are premature. Discovery
15 is continuing in this action and Bungie has not completed its factual investigation. These
16 responses are made in good faith and after diligent inquiry into the facts and information now
17 known to Bungie as well as its present analysis of the case. However, documents that may be
18 responsive to the Interrogatories may not yet have been discovered. Accordingly, without
19 asserting an obligation to do so, and without waiving the objections asserted herein, Bungie
20 reserves the right to amend and/or supplement its responses as and when additional information
21 is discovered. Additionally, because Bungie’s responses are based on information that it has
22 identified to date, they do not preclude Bungie from relying on facts or documents discovered or
23 generated pursuant to subsequent investigation and discovery.

24 5. Bungie objects to the Interrogatories to the extent they seek information of a third
25 party that is in Bungie’s possession, custody, or control but is subject to an obligation of
26 confidentiality and/or nondisclosure to the third party. Bungie will provide such information and

1 documents or things only to the extent it can do so consistent with the Stipulated Protective
2 Order entered in this case (Dkt. No. 60).

3 6. Bungie objects to the Interrogatories to the extent they seek documents or things
4 not within Bungie's possession, custody, or control, or not maintained by Bungie in its ordinary
5 course of business. Bungie will provide only relevant, non-privileged documents that are
6 presently within Bungie's possession, custody, or control and that it is able to locate after a
7 reasonable investigation.

8 7. Bungie objects to the Interrogatories to the extent they seek documents or things
9 in Phoenix Digital's possession and/or available to Phoenix Digital from public sources.

10 8. Bungie objects to the Interrogatories to the extent they seek information more
11 efficiently and appropriately obtained through some other form of discovery.

12 9. Bungie objects to the Interrogatories to the extent they seek disclosure of
13 confidential, proprietary, and trade secret information or information that is otherwise
14 commercially sensitive, and will only produce those documents consistent with the Stipulated
15 Protective Order entered in this case (Dkt. No. 60).

16 10. Bungie objects to the Interrogatories, and their Definitions, to the extent they
17 purport to impose any requirement or discovery obligation on Bungie greater or different than
18 those imposed by the Federal Rules of Civil Procedure and the applicable rules and orders of this
19 Court. Bungie will respond to the Interrogatories in compliance with the Federal Rules of Civil
20 Procedure and the Local Rules of this Court.

21 11. Bungie objects to Definitions 1 and 2 of Phoenix Digital's First Set of Requests
22 for Production, which have been incorporated into Phoenix Digital's First Set of Interrogatories,
23 on the grounds that they are vague and ambiguous, specifically as to the term "Plaintiff" because
24 it has been given two different definitions. For purposes of these objections and responses,
25 Bungie interprets "Plaintiff" to refer to Bungie, Inc.
26

12. Bungie further objects to Definition 2 of Phoenix Digital’s First Set of Requests for Production, which have been incorporated into Phoenix Digital’s First Set of Interrogatories on the grounds that it is vague and ambiguous, specifically as to the meaning of the term “indirectly.” For purposes of these objections and responses, Bungie interprets this definition to encompass only legal entities owned directly by Bungie.

RESPONSES

INTERROGATORY NO. 1:

Identify by specific reference, (e.g., page and line number) to any documents produced by Bungie in response to Phoenix Digital’s Document Interrogatories Nos. 1-4, served June 23, 2022, any and all portions of the “Destiny...computer software code” that you contend have been “copied” by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19, 2022.

RESPONSE TO INTERROGATORY NO. 1:

In addition to its General Objections, Bungie objects to this Interrogatory as premature. Despite prior representations regarding their possession of the source code for the cheat software at issue, Defendants have not produced such source code in response to Bungie’s discovery requests. Bungie expressly reserves its rights to supplement this response when such source code has been produced. Bungie further objects to this request as vague, ambiguous and unduly burdensome. Identifying copied object code for *Destiny 2* by “page and line number” is not reasonably feasible or practical.

Subject to and without waiving these objections, Bungie responds as follows: Bungie contends that Defendants have made copies of the entirety of the object code for *Destiny 2*, as well as specifically copied and modified object code that corresponds to the data structures for player positioning, combatant positioning, rendering functions and the angle deltas for mouse movements. Bungie is willing to meet and confer regarding other methods to identify the copied object code.

1 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
 2 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
 3 information.

4
 5 **INTERROGATORY NO. 2:**

6 Identify all "derivative works" that Bungie contends have been created, prepared and/or
 7 distributed by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19,
 8 2022.

9 **RESPONSE TO INTERROGATORY NO. 2:**

10 In addition to its General Objections, Bungie objects to this Interrogatory as premature.
 11 Despite prior representations regarding their possession of the source code for the cheat software
 12 at issue, Defendants have not produced such source code in response to Bungie's discovery
 13 requests. Bungie expressly reserves its rights to supplement this response when such source code
 14 has been produced.

15 Subject to and without waiving these objections, Bungie responds as follows: Bungie
 16 contends that Defendants have created, prepared, and/or distributed derivative works of Bungie's
 17 *Destiny 2* copyrights in at least the following ways: incorporating software code derived from
 18 Bungie's *Destiny 2* data structures into Defendants' *Destiny 2* cheat software; incorporating
 19 software code that consists of reverse-engineered software code from *Destiny 2* into Defendants'
 20 *Destiny 2* cheat software; distributing the *Destiny 2* cheat software that injects code into the *Destiny*
 21 *2* game engine while running, thus creating a derivative work; and creating a modified display of
 22 *Destiny 2*'s original audiovisual output.

23 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
 24 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
 25 information.

INTERROGATORY NO. 3:

Do you contend that, “reverse-engineering Bungie’s computer software code for Destiny 2’s camera and player data structures,” as alleged in Paragraph 105 of the Amended Complaint filed May 19, 2022, is an act of “direct” copyright infringement as alleged in Paragraph 107 of the Amended Complaint filed May 19, 2022? If your answer is anything other than an unqualified “no,” state the legal and factual basis for any such contention.

RESPONSE TO INTERROGATORY NO. 3:

In addition to its General Objections, Bungie objects to this Interrogatory on the grounds that it calls for a legal conclusion and seeks Privileged Information. Responding to this interrogatory necessarily requires a legal determination of what constitutes copyright infringement and an application of the legal determination to the facts at issue.

INTERROGATORY NO. 4:

Identify with specificity what the “infringing acts” of others, including but not limited to “cheat developers,” and “purchasers” as alleged in Paragraph 108-110 of the Amended Complaint filed May 19, 2022, consist of.

RESPONSE TO INTERROGATORY NO. 4:

In addition to its General Objections, Bungie objects to this Interrogatory on the grounds that it is vague and ambiguous, specifically as to the meaning of “with specificity.”

Subject to and without waiving these objections, Bungie responds as follows: the cheat developers of Defendants’ *Destiny 2* cheat software copied of *Destiny 2* software code to create and/or update the cheat software and created derivative work(s) based on the *Destiny 2* software code and/or audiovisual works while creating and/or updating the cheat software. The cheat developers and other third parties also hosted Defendants’ *Destiny 2* cheat software copied and/or distributed a copy of the cheat software when Defendants sold a copy of the cheat software through their website(s). Purchasers of Defendants’ *Destiny 2* cheat software downloaded or otherwise

1 created a copy of the cheat software on their computers and/or used the cheat software while
2 playing *Destiny 2*.

3 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
4 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
5 information.

6
7 **INTERROGATORY NO. 5:**

8 Identify all manners in which Bungie Inc. has been damaged by any of the actions of
9 Phoenix Digital alleged in the Amended Complaint filed May 19, 2022, including but not limited
10 to the amount of such damage and the factual basis underlying the claim for such damages.

11 **RESPONSE TO INTERROGATORY NO. 5:**

12 In addition to its General Objections, Bungie objects to this Interrogatory as premature.
13 Discovery is ongoing, and documents and information needed to answer this Interrogatory are in
14 Defendants' and/or third parties' possession, custody, or control. Expert discovery is also ongoing,
15 which may be necessary to answer this Interrogatory.

16 Subject to and without waiving these objections, Bungie responds as follows: Bungie's
17 damages in this case include, but are not limited to, loss of *Destiny 2* players due to the use of
18 Defendants' *Destiny 2* cheat software and associated revenue, harm to Bungie's reputation and
19 goodwill associated with *Destiny 2* as a result of players using Defendants' *Destiny 2* cheat
20 software, and expenses associated with detecting, investigating, and preventing *Destiny 2* players
21 from using Defendants' *Destiny 2* cheat software.

22 Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and
23 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more
24 information.

INTERROGATORY NO. 6:

Identify the person or persons having the most knowledge concerning the factual allegations made in Paragraphs 9, 48, 49, 50, 51, 55, 59, 77 and 93 of the Amended Complaint filed May 19, 2022.

RESPONSE TO INTERROGATORY NO. 6:

In addition to its General Objections, Bungie objects to this Interrogatory on the grounds that it is compound and constitutes 9 separate Interrogatories. Bungie further objects to this request as vague and ambiguous as to the meaning of “persons having the most knowledge” and the scope of the Interrogatory.

INTERROGATORY NO. 7:

State what “information” and what “belief” either supported or now supports the allegations made “on information and belief” in Paragraphs 2, 3, 8, 35, 80, 83, 85, 87, 88, 90 and 91 of the Amended Complaint filed May 19, 2022 and identify the person or persons having the most knowledge concerning those allegations.

RESPONSE TO INTERROGATORY NO. 7:

In addition to its General Objections, Bungie objects to this Interrogatory on the grounds that it is compound and constitutes at least 11 independent Interrogatories. Bungie further objects to this Interrogatory to the extent it seeks Privileged Information regarding Bungie’s “beliefs.”

INTERROGATORY NO. 8:

Has Bungie ever installed, operated, used or used remotely any “spy” or other surveillance software on any computer owned, operated or controlled by any of the Defendants?

RESPONSE TO INTERROGATORY NO. 8:

In addition to its General Objections, Bungie objects to this Interrogatory as seeking information not relevant to the claim or defense of any party. Bungie further objects to this request

1 as vague and ambiguous as to which computers are “owned, operated or controlled by any of the
 2 Defendants.” Despite Bungie’s request for the information, Defendants have not provided
 3 information sufficient to identify all computers they own, operate or control.

4 Subject to and without waiving these objections, Bungie responds that it has not installed,
 5 operated, used, or used remotely any “spy” or other surveillance software on Defendants’
 6 computers.

7
 8 **INTERROGATORY NO. 9:**

9 Identify the person or persons having the most knowledge concerning Bungie, Inc.’s
 10 implementation (sic) of the “technological protection measures” in Destiny 2 (as alleged in
 11 Paragraph 54 of the Amended Complaint filed May 19, 2022) prior to Bungie, Inc.’s
 12 implementation of Battleye, including but not limited to the individual or individuals who gave
 13 final approval for Bungie, Inc.’s implementation of the “technological protection measures” so
 14 identified.

15 **RESPONSE TO INTERROGATORY NO. 9:**

16 In addition to its General Objections, Bungie objects this Interrogatory as seeking
 17 information not relevant to the claim or defense of any party that has been asserted in this
 18 proceeding. The person(s) that gave “final approval” for Bungie’s technological protection
 19 measures are not relevant to any claim asserted in this federal court litigation.

20 Subject to and without waiving these objections, Bungie responds as follows: Edward
 21 Kaiser.

22
 23 **INTERROGATORY NO. 10:**

24 Identify with specificity what the relationship is between Bungie Inc. and the aimjunkies
 25 software purchasers using the email addresses “Jesuslover666@gmail.com” and/or
 26 “martinzeniui@gmail.com” including, but not limited to, the identity of the person or persons

1 having the most knowledge concerning those email addresses and/or the individuals associated
2 therewith.

3 **RESPONSE TO INTERROGATORY NO. 10:**

4 In addition to its General Objections, Bungie objects to this Interrogatory as seeking
5 information not relevant to the claim or defense of any party. Bungie further objects to this
6 Interrogatory as compound and constitutes two separate Interrogatories.

7 Subject to and without waiving these objections, Bungie responds as follows:

8 The martinzeniui@gmail.com account was used by Bungie for the sole purpose of
9 purchasing a copy of Defendants' *Destiny 2* cheat software sold through AimJunkies.com. Edward
10 Kaiser has the most knowledge concerning this email address.

11 Bungie does not have any relationship with the aimjunkies software purchaser using the
12 email address Jezuslover666@gmail.com.

13
14 **INTERROGATORY NO. 11:**

15 Identify each person who was consulted or who supplied information used to respond to
16 each of the above interrogatories and identify each interrogatory for which each such person
17 supplied information or was consulted.

18 **RESPONSE TO INTERROGATORY NO. 11:**

19 Subject to and without waiving its General Objections, Bungie responds as follows:

20 Edward Kaiser

21 James Barker
22
23
24
25
26

1 Dated: September 12, 2022

By: s/ Jacob P. Dini

William C. Rava, Bar No. 29948

Jacob P. Dini, Bar No. 54115

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Attorneys for Plaintiff BUNGIE, INC.,

26
BUNGIE'S OBJ. AND RESP. TO PHOENIX
DIGITAL'S FIRST SET OF ROGS – 12
(NO. 2:21-CV-811-TSZ)

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VERIFICATION OF INTERROGATORY ANSWERS

I, Edward Kaiser, am an Engineering Lead for Bungie, Inc. and I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2022.

By: _____
Edward Kaiser

I, Edward Kaiser, am an Engineering Lead for Bungie, Inc. and I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief.

Executed on September 12, 2022.

By: Edwi
Edward Kaiser

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Bungie, Inc.'s Objections and Responses to Defendant Phoenix Digital Group LLC's First Set of Interrogatories to the following on September 12, 2022, via email at the address below:

Philip P. Mann, WSBA No. 28860
Mann Law Group PLLC
403 Madison Ave. N.
Suite 240
Bainbridge Island, WA 98110
Email: phil@mannlawgroup.com

Dated: September 12, 2022

s/ Christian W. Marcelo
Christian W. Marcelo

CERTIFICATE OF SERVICE
(No. 2:21-cv-811-TSZ)

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